**TRANSMITTAL OF APPEAL BRIEF (Large Entity)**Docket No.
ITL.0564US

In Re Application Of: Edward O. Clapper

Application No.	Filing Date	Examiner	Customer No.	Group Art Unit	Confirmation No.
09/854,778	May 14, 2001	Allan Hoosain	21906	2645	8166

Invention: Establishing a Local Wireless Intranet for Retail Customers

COMMISSIONER FOR PATENTS:

Transmitted herewith in triplicate is the Appeal Brief in this application, with respect to the Notice of Appeal filed on September 28, 2005

The fee for filing this Appeal Brief is: \$500.00


- ☒ A check in the amount of the fee is enclosed.
- ☐ The Director has already been authorized to charge fees in this application to a Deposit Account.
- ☒ The Director is hereby authorized to charge any fees which may be required, or credit any overpayment to Deposit Account No. 20-1504
- ☐ Payment by credit card. Form PTO-2038 is attached.

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

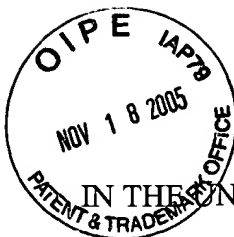

Signature

Timothy N. Trop, Reg. No. 28,994
Trop, Pruner & Hu, P.C.
8554 Katy Freeway, Suite 100
Houston, Texas 77024
(713) 468-8880
(713) 468-8883 (fax)

Dated: November 15, 2005

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)] on	
November 15, 2005	(Date)
	
Signature of Person Mailing Correspondence	
Cynthia L. Hayden	
Typed or Printed Name of Person Mailing Correspondence	

CC:



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Applicant:

Edward O. Clapper

Serial No.: 09/854,778

Filed: May 14, 2001

For: Establishing a Local Wireless
Intranet for Retail Customers

§
§
§
§
§
§
§
§

Art Unit: 2645

Examiner: Allan Hoosain

Docket: ITL.0564US
P11335

Assignee: Intel Corporation

Mail Stop **Appeal Brief-Patents**
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

APPEAL BRIEF

Date of Deposit: November 15, 2005

I hereby certify under 37 CFR 1.8(a) that this correspondence is being deposited with the United States Postal Service as **first class mail** with sufficient postage on the date indicated above and is addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Cynthia L. Hayden
Cynthia L. Hayden

11/21/2005 WABDELRI 00000071 09854778

500.00 DP

01 FC:1402

TABLE OF CONTENTS

REAL PARTY IN INTEREST	3
RELATED APPEALS AND INTERFERENCES.....	4
STATUS OF CLAIMS	5
STATUS OF AMENDMENTS	6
SUMMARY OF CLAIMED SUBJECT MATTER	7
GROUND OF REJECTION TO BE REVIEWED ON APPEAL	8
ARGUMENT	9
CLAIMS APPENDIX.....	15
EVIDENCE APPENDIX.....	None
RELATED PROCEEDINGS APPENDIX.....	None

REAL PARTY IN INTEREST

The real party in interest is the assignee Intel Corporation.

RELATED APPEALS AND INTERFERENCES

None.

STATUS OF CLAIMS

Claims 1-43 (Rejected).

Claims 1-43 are rejected and are the subject of this Appeal Brief.

STATUS OF AMENDMENTS

All amendments have been entered.

SUMMARY OF CLAIMED SUBJECT MATTER

Claims 1, 11, and 21 call for wirelessly linking a plurality of customers within a retail facility through a local area network (see item 31 in Figure 4). These claims further calls for enabling customers to communicate with one another via text messages over said network.

Claims 26, 29, and 32 call for establishing a local area network in a retail facility (again, please see item 31 in Figure 4). These claims further include providing retail customers with a terminal (see items 10a-10c in Figure 4) to communicate with said network. The terminal is activated by swiping a credit card through a slot in the terminal (see the slot 23 in the terminal 12 in Figure 2). See, also, the specification at page 4, line 16, through page 5, line 2.

Claim 35 calls for establishing a local area network (see Figure 4, item 31) in a retail facility. The information is pushed to a customer terminal (see the item 12 in various figures), coupled to said network “depending on the current location of the terminal within the retail facility.” See the specification at page 11, lines 17-24. It is there explained that when the user is close, for example, to the plumbing department, the server 34 may provide advertising information relating to particular plumbing products. Claims 38 and 41 are similar to claim 35.

At this point, no issue has been raised that would suggest that the words in the claims have any meaning other than their ordinary meanings. Nothing in this section should be taken as an indication that any claim term has a meaning other than its ordinary meaning.

In the following discussion, the independent claims are read on one of many possible embodiments without limiting the claims:

At this point, no issue has been raised that would suggest that the words in the claims have any meaning other than their ordinary meanings. Nothing in this section should be taken as an indication that any claim term has a meaning other than its ordinary meaning.

GROUND OF REJECTION TO BE REVIEWED ON APPEAL

- A. Are Claims 1-3, 5, 7, 11-12, 14-15, 17, and 21-24 Anticipated by Swartz?**
- B. Are Claims 1-3, 5, 7-12, 14-15, 17-24, 35-36, 38-39, and 41-42 Unpatentable Over Beach in View of Swartz?**
- C. Are Claims 26-34, 4, 13, 25, 37, and 40 Unpatentable Over Beach in View of Swartz and Further in View of Ogasawara?**
- D. Is Claim 43 Unpatentable Over Beach in View of Swartz and Further in View of Kraft?**

ARGUMENT

A. Are Claims 1-3, 5, 7, 11-12, 14-15, 17, and 21-24 Anticipated by Swartz?

The office action indicates that the first element of claim 1, “wirelessly linking a plurality of customers within a retail facility through a local area network based in the retail facility,” is shown in Figure 6A of Swartz. However, nothing about Figure 6A indicates that it is a retail facility. The system depicted there is apparently a PBX system. There is no reason to believe that it is a retail facility or that it links customers within a retail facility through a local area network based in the retail facility. Instead, presumably, the reference relates to a system used in businesses to route telephone calls. No other support is provided for the rejection of claim 1 with respect to this element and, therefore, plainly the rejection is inadequate.

With respect to the second element of claim 1, “enabling customers to communicate with one another via text messages over the network,” column 17, lines 8-26; column 7, lines 33-40; and column 4, lines 57-61; and Figure 1 are cited.

Figure 1 is another depiction of a phone system with an Internet connection. There is no indication that it is applicable to use by customers for communicating between customers or to communicating between customers via text messages over a network.

The material cited in column 17 talks about two-way paging. Its pertinency is difficult to discern.

The material cited in column 7 talks about interaction between a local area network and a PBX. Its pertinency is also difficult to discern.

The cited material in column 4 talks about enabling a mobile unit to transmit data to other devices on a LAN. It talks about a telephone and a voice communication channel. There appears to be no discussion of customers, communicating between customers, communicating via text messages over a network, or anything having to do with a retail facility.

Thus, no showing of any of the elements within claim 1 is made out by the rejection. Therefore, the rejection of claim 1 should be reversed. On a similar analysis, the anticipation rejection of the other claims should also be reversed.

B. Are Claims 1-3, 5, 7-12, 14-15, 17-24, 35-36, 38-39, and 41-42 Unpatentable Over Beach in View of Swartz?

Claim 1

It is asserted that Beach teaches “wirelessly linking a plurality of consumers including clerks or consumer service attendants (customers) within a retail facility through a local area network based in the retail facility,” citing Figure 1, label 20, and column 3, lines 34-40 and 57-58. To the contrary, the fundamental claimed concept of enabling customers to communicate is not taught. The suggestion that clerks or customer service attendants are comparable to communication between customers is simply wrong. The bottom line is none of the references would ever want to let customers talk to each other because to do so would require providing them with some type of access means and allowing them to enter the network. No one but the present inventor ever contemplated a way to do such a thing. Everyone else is explicitly teaching away. For example, Figure 1 shows no customer communication whatsoever, much less a customer-to-customer communication. The label 20, referred to in the office action, refers to a host 24 “at a related site 20.” See column 6, lines 10-15. There is no basis whatsoever for the assertion that item 20 teaches customer-to-customer communications. Likewise, the material at column 3 has nothing of the sort.

It also is asserted, clearly incorrectly, that the customers are able to communicate with one another via text messages in the cited reference to Beach, citing column 3, lines 44-56, and column 11, line 57, through column 12, line 3. The cited material has nothing to do with customer-to-customer communications or even customer-to-customer text communications or even to text communications whatsoever. The material in column 12 does talk about communications to a customer service attendant, but that communication is not commensurate with the scope of the claims which require text messaging between customers. The cited material is so clearly irrelevant that the rejection cannot make out a *prima facie* case. For example, the scanning of coupons has nothing to do with the claimed invention set forth in claim 1.

The deficiency of the rejection is apparent on the face of the office action. At lines 10 and 11, on page 4, it is conceded that “Beach does not teach the following limitation: ‘customers to communicate with one another’.” But, in the line right above, it is asserted that Beach does teach “enabling customers to communicate with one another by a message request (text

messages) over said network.” Thus, not only is a *prima facie* rejection not made out, but the rejection is so internally inconsistent as to be deficient on its face.

The suggestion that Beach suggests the limitation because Beach teaches that parent inquiries can be transmitted to other users in a store would suggest the parent receiving responses to the inquiries. Of course, the problem is that no reference enables the customers to communicate with one another within the store. The natural way of thinking would be to allow store management to use the system, but not to make such a system available to customers. Moreover, if you give customers terminals, what do you do to keep them from taking them? All of these problems lead one away from the solution claimed here. It simply makes no sense that a teaching of allowing management to communicate teaches allowing customer communications in a retail setting. If anything, the two cited references together show that no such thing was ever contemplated and no concept of letting customers talk to each other was ever appreciated.

Therefore, the rejection of claim 1, based on the combination of Beach and Schwartz, should be reversed for the same reasons that the § 102 rejection on one of those two references, the Schwartz reference, should be reversed.

Claim 8

Claim 8 calls for providing information about the current location of a processor-based device associated with a customer. The office action simply refers, in the response to arguments, to Beach at column 12, lines 51-52. Those lines are “ready), (ii) place orders for out-of-stock items, and (iii) identify the location of all store shoppers and employees.”

Again, this has nothing to do with identifying the current location of a processor-based device. It, presumably, simply calls for audible communications to contact employees or shoppers. It does not suggest some way to identify where the device actually is located. Therefore, the rejections of claims 8 and 9 should be reversed.

Claim 35

Again, with respect to claim 35, the Examiner ignores the arguments made.

Claim 35 calls for establishing a local area network in a retail facility and pushing information to a customer terminal coupled to the network depending on the current location of the terminal within the retail facility.

Claim 35 was rejected over Beach in view of Swartz. However, claim 35 was never specifically discussed. There is nothing in Beach or Swartz which pushes information to a customer terminal based on the current location of a terminal in a retail facility.

On a similar analysis, the rejections of claims 38 and 41 should be reversed.

C. Are Claims 26-34, 4, 13, 25, 37, and 40 Unpatentable Over Beach in View of Swartz and Further in View of Ogasawara?

Claim 4

The adaptation to retail customers is brought out more explicitly in claim 4. Claim 4 enables the system to be used by unknown retail customers. The system may be activated, according to claim 4, by enabling users to swipe a credit card through a slot in the device.

One problem with the system shown in the Swartz reference is that if a terminal was just simply handed out to customers walking into Walmart, not all of the terminals would probably find their way back. Claim 4 calls for requiring a credit card to activate the unit.

The cited reference to Ogasawara has absolutely no such capability or functionality. All Ogasawara says is that a smart card can be used to exchange data. Ogasawara does not teach anything about activating a unit, he does not teach anything about a credit card, and, therefore, he most certainly does not teach anything about using a credit card to activate a unit. Moreover, neither he nor Swartz has any way to enable the initiation of a system in which retail customers can communicate with one another without simply giving away the communication units. In other words, the provision of the credit card swipe capability enables some control over the units. No such concept is anywhere suggested in any of the cited references.

Claim 26

Claim 26 calls for providing retail customers with a terminal to communicate with the network and the terminal activated by the swiping of the credit card. No reference to date has identified any terminal that is activated by swiping a credit card. The Examiner's refusal to address this repeatedly pointed out point simply confirms the absence of any basis for the rejection.

Claim 26 calls for establishing a local area network and providing retail customers with a terminal to communicate with the network, the terminal being activated by swiping a credit card

through a slot in the terminal. It is suggested that Ogasawara teaches mobile terminals with slots for receiving credit cards. But these credit cards have nothing to do with activating or deactivating the terminal.

In particular, the cited material simply indicates that a card may be swiped to transfer information, but that does not enable the terminal to be activated by swiping a card through a slot in the terminal. The claimed invention enables the use of the system in a publicly accessible retail facility, a problem not faced by Ogasawara.

There is no reason to believe that Ogasawara is activated by card swiping. Instead, the cited language merely suggests that information may be transferred to the system by swiping the card. That information may simply augment a fully functional terminal. Nothing in the material supports the argument that the terminal is activated by card swiping.

Therefore, reconsideration of claim 26, its dependent claims, claim 29, claim 32, and all of their dependent claims is respectfully requested.

D. Is Claim 43 Unpatentable Over Beach in View of Swartz and Further in View of Kraft?

It was pointed out that no cited reference teaches pushing information to customers based on their location. Despite this, the Examiner relies on his previous rejection without any identification of such an element in the prior art.

Claim 43 was rejected over Beach plus Kraft. It is suggested that Beach teaches the identification of the location of shoppers, citing column 12, lines 52-53. While this may be so, he does not suggest doing it electronically. He plainly and clearly suggests providing audible communications so that customers can indicate where they are.

The reference to Kraft is discussed, but is not made of record by citation on the notice of references cited.

However, even if Kraft did teach locating shoppers in malls using terminal devices, it provides no suggestion of providing information to those customers based on their location. In other words, there is no suggestion that one could provide information depending on the location of the customer. For example, if the customer was at one location next to one product, he could be pushed information about that product and if he was at another location adjacent to another product, he could be pushed information about that other product. No such thing is suggested by

any reference, including the informally cited Kraft reference, either alone or in combination with any of the other cited references.

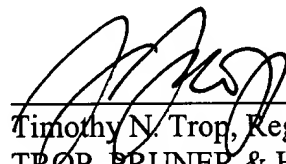
The Examiner is respectfully requested to specifically address these points so that prosecution may be advanced or an informed decision may be made about whether to appeal.

* * *

Applicant respectfully requests that each of the final rejections be reversed and that the claims subject to this Appeal be allowed to issue.

Respectfully submitted,

Date: November 15, 2005



Timothy N. Trop, Reg. No. 28,994
TROP, PRUNER & HU, P.C.
8554 Katy Freeway, Ste. 100
Houston, TX 77024
713/468-8880 [Phone]
713/468-8883 [Fax]

Attorneys for Intel Corporation

CLAIMS APPENDIX

The claims on appeal are:

1. A method comprising:
wirelessly linking a plurality of customers within a retail facility through a local area network based in the retail facility; and
enabling customers to communicate with one another via text messages over said network.
2. The method of claim 1 wherein wirelessly linking includes providing wireless access to a server by a plurality of customers within a retail facility.
3. The method of claim 1 including providing a processor-based device to retail customers that wirelessly communicates with said server.
4. The method of claim 3 including enabling users to activate said device by swiping a credit card through a slot in said device.
5. The method of claim 1 including receiving audible communications from said customers.
7. The method of claim 1 including pushing electronic files to customers.
8. The method of claim 1 including providing information about the current location of a processor-based device associated with a customer.
9. The method of claim 8 including providing information about the customer's location to the server.

10. The method of claim 9 including pushing information to the customer depending on the customer's current location.

11. An article comprising a medium storing instructions that, if executed, enable a processor-based system to:

wirelessly link a plurality of customers within a retail facility through a local area network based in the retail facility; and

enable customers to communicate with one another over said network through text messages.

12. An article of claim 11 further storing instructions that enable the processor-based system to be accessed wirelessly by a plurality of customers within a retail facility.

13. The article of claim 11 further storing instructions that enable the processor-based system to recognize a processor-based device used by a customer in response to a credit card swipe through a slot in said device.

14. The article of claim 11 further storing instructions that enable the processor-based system to receive audible communications from said customers.

15. The article of claim 14 further storing instructions that enable the processor-based system to broadcast audio files to said customers.

17. The article of claim 11 further storing instructions that enable the processor-based system to push electronic files to customers.

18. The article of claim 11 further storing instructions that enable the processor-based system to provide information about the current location of a processor-based device associated with a customer.

19. The article of 18 further storing instructions that enable the processor-based system to determine the customer's location.

20. The article of claim 19 further storing instructions that enable the processor-based system to push information to a customer depending on the customer's current location.

21. A system comprising:
a processor; and
a storage coupled to said processor to wirelessly link a plurality of customers within a retail facility through a local area network based in the retail facility and enable customers to communicate with one another via text messages through said network.

22. The system of claim 21 wherein said system is a server.

23. The system of claim 22 wherein said server is coupled to a wireless interface.

24. The system of claim 21 wherein said system maintains a network of wireless, processor-based devices used by customers.

25. The system of claim 24 wherein said system recognizes said processor-based device in response to the detection of a credit card swipe through a slot in one of said devices.

26. A method comprising:
establishing a local area network in a retail facility; and
providing retail customers with a terminal to communicate with said network, said terminal being activated by swiping a credit card through a slot in said terminal.

27. The method of claim 26 including enabling customers in said retail facility having said terminals to exchange messages with one another in the form of text messages.

28. The method of claim 26 including providing a server to control said network and enabling information to be pushed to customer terminals depending on the current location within the retail facility of the customer.

29. An article comprising a medium storing instructions that, if executed, enable a processor-based system to:

activate a terminal in said local area network in response to swiping a credit card through a slot in said terminal; and

establish communication with a local area network in a retail facility.

30. The article of claim 29 further storing instructions that, if executed, enable customers in a retail facility to exchange text messages through said network.

31. The article of claim 29 further storing instructions that, if executed, enable information to be pushed to customer terminals depending on the current location within the retail facility of the customer.

32. A processor-based system comprising:

a processor; and

a storage coupled to said processor, said storage storing instructions to activate said terminal in response to swiping a credit card through a slot in said terminal and to communicate through a local area network in a retail facility.

33. The system of claim 32, said storage storing instructions to enable said terminal to exchange text messages through said network.

34. The system of claim 32, said storage storing instructions to enable said terminal to receive information pertinent to the current location of the terminal within the retail facility.

35. A method comprising:
establishing a local area network in a retail facility; and
pushing information to a customer terminal coupled to said network depending on
the current location of the terminal within said retail facility.

36. The method of claim 35 including enabling customers in said retail facility having
said terminals to exchange messages with one another in the form of text messages.

37. The method of claim 35 including enabling a terminal to access the network in
response to swiping a credit card through a slot in said terminal.

38. An article comprising a medium storing instructions that, if executed, enable a
processor-based system to:
establish a local area network in a retail facility; and
push information to a customer terminal coupled to said network depending on
the current location of the terminal within said retail facility.

39. The article of claim 38 further storing instructions to enable customers in said
retail facility to exchange messages with one another in the form of text messages.

40. The article of claim 38 further storing instruction that, if executed, enable said
system to access the network in response to swiping a credit card through a slot.

41. A system comprising:
a processor; and
a storage coupled to said processor storing instructions to establish a local area
network in said retail facility between a plurality of customer terminals in said retail facility and
push information to said customer terminals depending on the current location of the terminals
within the retail facility.

42. The system of claim 41 wherein said system to enable customers in said retail facility to exchange messages with one another in the form of text messages.

43. The system of claim 41 including a global positioning device coupled to said processor.

EVIDENCE APPENDIX

None

RELATED PROCEEDINGS APPENDIX

None